

POLICY DECLARATIONS OF THE
COMMISSION ON JUDICIAL PERFORMANCE

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PREAMBLE

The compelling force of necessity for (1) uniformity and continuity of procedure and (2) equitable, expeditious resolution of recurrent and detailed issues of procedure, authorize the formulation and engrossment of a single, yet amendable document, containing policy declarations detailing commission policies, procedures and practices. These policy declarations shall reflect internal procedural detail neither duplicative of nor inconsistent with constitutional mandate, statutes, or Judicial Council Rules. These policy declarations shall be based upon concepts of utility, experience, and fair hearing of matters before the commission.

TITLE

These policy declarations shall be known and may be cited as the Policy Declarations of the Commission on Judicial Performance.

DEFINITIONS

HEARING means a formal proceeding before the commission or three special masters pursuant to rule 905 et seq., to inquire into and based upon charges against the judge issued after full investigation, the judge's answer and legal evidence received, pursuant to rule 905 et seq.

APPEARANCE means an opportunity for a judge to informally contest imposition of an admonishment in argument before the commission based on the proceedings which resulted in the issuance of a notice of intended admonishment and the judge's statement.

DEMAND means a notice in writing of a judge's rejection of an intended private admonishment.

DESIGNATED OFFICER OR OFFICERS means an individual or individuals designated by the commission to carry out a specific commission function, and may be a commission member or members, a special master or masters or the commission director.

DIVISION I. INVESTIGATION PROCEDURE

1.1 Staff Inquiry

The commission may direct staff to make inquiry under rule 904(a)(2) or 904(b) to determine 1) whether or not there are sufficient facts to warrant a preliminary investigation under rule 904(a)(3) or 904(b) and, 2) what other disposition is appropriate. This may but need not include writing the judge an inquiry letter under rule 904.1 and policy declaration 1.3.

1.2 Authorization for Staff Inquiry Between Meetings

Upon approval of the chairperson or acting chairperson, there may be an appropriate inquiry as soon as possible in each case which on its face appears to require such inquiry.

1.3 Inquiry Letter

As part of a staff inquiry, allegations of claimed misconduct may be furnished the subject judge so that the judge has an opportunity to present such matters as the judge may choose, including 1) information about factual aspects of claimed misconduct and 2) other relevant comment. The purpose is to assist the commission in making a decision regarding further action. An inquiry letter may, but need not, precede a preliminary investigation letter. An inquiry letter and opportunity for response must precede issuance of a confidential advisory letter under rule 904.1.

1.4 Authorization for Inquiry Letters and Preliminary Investigation Letters, Between Meetings, in Certain Types of Situations

Upon approval by the chairperson or acting chairperson, and two other members, staff may institute inquiry letters and preliminary investigations between meetings. This authority is designed for clear cases and is to be exercised judiciously. Staff may institute without approval inquiry letters in ninety-day delay cases which are clear on their face and adequately supported.

1.5 Authorization for Inquiry Letter When There Has Been Direct Communication With the Judge

Upon approval of the chairperson or acting chairperson, staff may institute an inquiry letter between meetings upon receipt of a complaint when it appears that the complaint may have merit and there has already been direct communication of the complaint to the judge, the form of the letter to reflect the apparent direct communication.

1.6 Preliminary Investigation Letter

After commencement of a preliminary investigation under rule 904(a)(3) or 904(b) but before issuance of a notice of formal proceedings, the commission shall provide to the subject judge written notice of the investigation with a statement of the nature of the charges, and shall afford the judge a reasonable opportunity to present such matters as the judge may choose pursuant to rule 904.2(a).

1.7 Time Limits for Judge's Response to Inquiry and Preliminary Investigation Letters

Pursuant to rules 903.5 and 904.1, a reasonable time for a judge to respond to the merits of an inquiry letter or preliminary investigation letter shall be twenty (20) days from the date the letter was mailed to the judge. A fifteen (15) day extension may be granted in the discretion of staff. Any further extension not to exceed thirty (30) days may be granted by the chairperson for good cause.

1.8 Receipt of Information Showing Authorized Inquiry or Preliminary Investigation Letter Unwarranted

An inquiry letter or preliminary investigation letter authorized by the commission need not be sent before the following meeting if information later obtained by staff shows that the letter may not be warranted.

1.9 Interviews and Statements

In the course of a staff inquiry or investigation, persons questioned or interviewed to ascertain the validity of allegations shall be admonished that the inquiry or investigation is confidential under the California Constitution and Rules of Court (this does not restrict the informant's communication with the subject judge). When it appears that there may be use of the elicited information in connection with possible testimony, or discovery, the person providing the information shall be so advised.

1.10 Consent, Preservation

Consent to mechanical recording may be obtained from interviewees. Statements and interviews may be transcribed and preserved, and may be submitted to interviewees for signature and verification.

1.11 Investigation Subpenas

Commission investigation subpoenas may issue upon application to the commission chairperson stating the name, address and title, if any, of the person from whom information is sought, and whether or not a statement under oath is to be taken.

1.12 Expediting Subpena Enforcement

Upon a person's failure or refusal to attend or testify or produce any writings or things pursuant to a commission subpoena, the commission may order the person to appear at a special hearing before a designated officer or officers to show cause why the commission should not 1) petition the superior court pursuant to Government Code section 68752 for an order requiring the person to appear before the court and testify or produce the required writings or things; or 2) take other appropriate measures to enforce the subpoena.

DIVISION II. FORMAL PROCEEDINGS

2.1 Opposition to Private Admonishment; Statement of Objections, Appearance, Withdrawal of Opposition

A demand for an appearance after notice of private admonishment under rule 904.5 may include a written statement of the judge's objections, both legal and factual, to the commission's findings. The statement may include points and authorities in support of any legal arguments, and verified statements in opposition to the commission's factual findings. A statement of objections shall be filed with the commission within twenty (20) days after filing of a demand for an appearance.

An appearance under rule 904.5 is a judge's opposition in person with or without counsel to informally contest imposition of the private admonishment in argument before the

commission. Argument shall be limited to oral presentation by the judge not to exceed twenty (20) minutes.

If, after the appearance, the commission advises the judge pursuant to rule 904.5(b)(2) that the commission has rejected the objections to the intended admonishment and that the judge may either withdraw opposition and accept the private admonishment or continue opposition and request a formal hearing, the period within which the judge may withdraw opposition to the admonishment is fifteen (15) days after the mailing of the post-appearance notice.

2.2 [Deleted]

2.3 Pre-Hearing Conference

Staff may propose and coordinate a pre-hearing conference to be held not later than two (2) weeks prior to a hearing. The masters may determine whether pre-hearing conference orders need be in writing.

2.4 Agreed Statement

An agreed statement under rule 909(a) may be offered in place of all or part of the evidence after notice of formal proceedings. Appropriate conditions concerning a recommendation of discipline may be included. The examiner and commission staff may discuss with the respondent judge or counsel a proposed final disposition which may encompass a recommendation of limited discipline or dismissal of charges upon conditions including resignation or retirement.

2.5 Investigator or Agent at Hearing

The examiner and the respondent may each have present at the hearing one investigator or agent who has participated in the investigation or preparation for the hearing. That an investigator or agent may become a witness at the hearing shall not disqualify her/him from being present pursuant to this paragraph.

2.6 Proposed Findings and Conclusions

The masters may invite the examiner and respondent to submit proposed findings of fact and conclusions of law at the conclusion of the hearing.

DIVISION III. MISCELLANEOUS

3.1 Anonymous Complaints

Staff will evaluate anonymous complaints for merit; if a complaint is deemed sufficiently meritorious, it will be placed on the oversight agenda for consideration by the commission as to whether or not it should be docketed.

3.2 Setting Regular and Special Meetings

(1) Commission practice for setting regular meetings will consist of these steps: At the commission's organizational meeting in January of each year, staff will propose a choice of dates for each meeting for the calendar year. By commission action at each subsequent meeting, one proposed or tentative date will be approved for one or more of the following meetings.

(2) A special meeting shall be called (a) upon not less than five (5) days notice by the chairperson or acting chairperson, or (b) upon notice of request of not less than three members.

3.3 Preparation of Annual Report

The annual report will be prepared as follows: Staff will prepare and circulate a draft report in advance of the last commission meeting of each calendar year. After the commission passes on the draft report and makes any suggestions, staff will revise the draft report in accordance therewith and will submit the report in final form to the chairperson for signature during January of each year for the preceding calendar year.

3.4 Availability

The policy declarations of the commission will be published in the commission's annual report. In addition, relevant policy declarations will be sent to judges who are the subject of intended private admonishments and formal proceedings.

3.5 Election of Chairperson and Vice-Chairperson

At the first meeting of each calendar year the commission shall organize itself for the conduct of business for the ensuing year and shall select a chairperson and vice-chairperson.

3.6 Policy Declarations

When there is commission approval for staff to draft a policy declaration, any proposed enactment, amendment or repeal shall be submitted to each commissioner at least thirty (30) days immediately preceding the meeting at which a vote thereon is taken.

3.7 [Deleted]

3.8 Removed From Active Calendar

When a matter is removed from the active calendar, it shall be placed on the commission agenda periodically as required by the circumstances and subject to active consideration at the discretion of the commission.

3.9 Criminal Prosecution Arising Out of a Commission Investigation

In an appropriate case, the commission will refer for prosecution evidence of alleged criminal activity of a judge which first becomes known during the course of a commission investigation.

A Deputy Attorney General assigned as examiner shall advise the commission of the existence of any apparent criminal activity justifying prosecution for commission consideration.

Should a conflict arise with respect to the examiners' representation, the commission will consider the appointment of other counsel in place of the Attorney General.

3.10 Staff Authorization for Announcements

When the director believes an announcement pursuant to Article VI, section 18(f)(3) or (g) [Constitution prior to March 1, 1995], or pursuant to rule 902(b) (1), (2), (3) or (4) is desirable in a particular proceeding, the director shall so advise the chairperson who, following consultation with two other members, may authorize the announcement.

3.11 Duties of Trial Counsel

Trial Counsel shall serve as examiner in formal proceedings instituted by the commission, and shall represent the commission in litigation before the California Supreme Court and other courts when directed to do so by the commission. Trial Counsel shall serve under the direction of the commission's Director/Chief Counsel.

3.12 Commission Counsel

Commission Counsel shall assist the commission in its consideration of matters in which formal proceedings have been instituted and an evidentiary hearing before special masters or the commission has been held. Commission Counsel shall also assist the commission in its consideration of matters in which judges oppose intended private admonishments or public admonishments.

As to any matter in which Commission Counsel has participated in an investigative or adversarial capacity, Commission Counsel shall not assist the commission in its adjudication or deliberations.

Commission Counsel shall assist the commission in the preparation of determinations and orders.

Commission Counsel shall present to the commission proposals for disposition of matters in which formal proceedings have been instituted which have been jointly offered by Trial Counsel and the judge or judge's counsel. Commission Counsel shall serve as the commission's liaison to special masters appointed in formal proceedings.

Commission Counsel shall perform such additional duties as may be assigned by the commission.

DIVISION IV. DISABILITY RETIREMENT APPLICATIONS

4.1 Disability Applications: Confidentiality

The commission shall treat as confidential any information which is presented to the commission by a judge for retirement purposes, except that the fact that an application has been filed and has been approved or rejected may be revealed.

4.2 Disability Applications: Medical Consultants

The commission may arrange with the University of California Medical Centers and/or other qualified medical practitioners for medical consultants to provide independent medical examinations for disability retirement applicants, to assist the commission as necessary in evaluating disability retirement applications under Government Code section 75060 and for re-evaluation under Government Code section 75060.6.

4.3 Reexamination of Judges Retired for Disability

When approving a request for disability retirement, the commission shall decide on a case-by-case basis whether and when the judge shall be required to be reexamined pursuant to Government Code section 75060.6. Notwithstanding such decision, a judge retired for disability may be required to undergo reexamination pursuant to Government Code section 75060.6.

4.4 Procedure in Disability Retirement Matters

(1) An application for disability retirement must include: a consent to disability retirement, executed by the judge, and a medical certificate of disability, executed under penalty of perjury by a licensed physician. To complete the application, the commission ordinarily will require a medical report prepared by that physician in support of certification and all pertinent medical documentation.

(2) When a judge submits an application for disability retirement, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge 30 days to supply more complete data.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations may be requested within 120 days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge.

(4) Within 60 days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will either approve the application or tentatively deny it.

(5) If the commission tentatively denies the application, the commission will within 30 days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(6) Following a tentative denial, the judge may either withdraw the application or, within 30 days of the denial, file a request to present additional evidence. Within 30 days of the first commission meeting after such filing, the commission will appoint a special master authorized to take evidence, obtain additional medical information, and take any other steps he or she deems necessary to resolve the matter.

(7) Within 180 days after the appointment of a special master, the master will refer the matter back to the commission with a report containing proposed findings.

(8) Within 90 days of the first commission meeting following such referral, the commission will make a decision either approving the application and referring it to the Chief Justice, or denying the application and advising the Chief Justice.